



MDL 2311 Automotive Harness Systems Antitrust Litigation

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Docket No. 2311

IN RE: Automotive Wire Harness Systems
Antitrust Litigation

HEARING BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Thurgood Marshall Federal Judiciary Building
400 North Miami Avenue
Miami, Florida

January 26, 2012
Morning Session

Stenographically Reported by
Matthew P. Spoutz

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JUDGE HEYBURN: Good morning.

Mr. Persky.

MR. PERSKY: Good morning, Your Honors.

I'm here in support of Plaintiff Susan LaCava's motion to transfer the related cases to the eastern district of Michigan.

We suggest the eastern district of Michigan is the center of gravity of this case, and has the closest nexus to the related cases. None of the other proposed districts suggested have any material connection to this case.

All of the factors the court has looked to in the past to transfer a case strongly point to the eastern district of Michigan as the most appropriate

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 transfer district. The location of the grand jury
 in criminal cases are in that district.
 Conspiratorial meetings occurred in that district.
 The office of three of the foreign defendants in the
 eastern district of Michigan were raided by the FBI.
 Most of the corporate defendants have offices or
 subsidiaries located in that district. Because of
 these facts, the parties, the witnesses, and
 relevant evidence are likely to be found in that
 district.

Indeed, the United States automobile

industry is centered in that district. In our view,
 it would be quite anomalous for the panel to send
 cases to any place other than Detroit. It would be
 tantamount to having the BP Gulf Oil spill cases
 sent to North Dakota for pretrial purposes.

In addition, other factors strongly point
 to the eastern district of Michigan. For example,
 the first filed answer was filed in this district.
 The vast majority of pending cases, more than
 three-quarters of the cases, are filed in this
 district. Indeed, all the defendants, including the
 Japanese and German defendants, favor transfer to
 this district.

When you look at the statistics with
 respect to the calendars of the various districts in
 play, the eastern district of Michigan has by far
 the most favorable statistics. The median time
 following the filing of district cases in Michigan
 is 8.3 months versus 35 months for the eastern
 district of Louisiana. Indeed, only 7.4 percent of
 the civil cases in the eastern district of Michigan
 are three years old versus 30 percent in the eastern
 district of Louisiana.

In our view, the eastern district of
 Michigan is by far the most appropriate transfer

district.

JUDGE HEYBURN: Who are most of the
 plaintiffs? Are most of the plaintiffs purchasers
 of automobiles?

MR. PERSKY: There are various classes.
 There is a class of direct purchasers of the auto
 wire harnesses. There is a class of dealers
 intermediate in the chain of distribution. There
 are a class of end payers who buy cars, and those
 who also buy auto wire harnesses to repair their
 cars. End payers are direct purchasers, dealers
 intermediate in the chain of the distribution and
 direct purchasers.

The vast majority of pending cases result
 in Michigan, including three-quarters of all the
 pending cases.

JUDGE HEYBURN: Thank you very much.
 Mr. Hansel.

MR. HANSEL: May it please the court, good
 morning, Your Honor. Greg Hansel for the direct
 purchaser plaintiffs.

Mr. Persky and others are speaking for the
 indirect purchasers such as consumers and the auto
 dealers. I'm speaking for the direct purchasers of
 wire harness products who all support the eastern

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1 district of Michigan as well.

2 Direct purchases are businesses who
3 purchase these products directly from the
4 defendants, including Defendant Laura Cava who plead
5 guilty in the eastern district of Michigan.

6 We are the only group who has standing to
7 sue for damages under the Sherman Act. There are
8 ten indirect purchaser cases all filed in the
9 eastern district of Michigan who unanimously support
10 that venue. None have filed anywhere else.

11 Historically and today, Detroit has been
12 the hub of the automotive industry in this country.
13 Your Honor sent the potatoes case to Idaho, the
14 chocolate case to Hershey, and the court did those
15 things for a reason. We submit the same reasoning
16 supports sending the wire harness automotive case to
17 Detroit.

18 Thank you.

19 JUDGE HEYBURN: You remember New Jersey
20 strenuously argued they are the chocolate capital of
21 the world. I don't know whether Michigan has a
22 contestant there.

23 Maybe Mr. Becnel can lighten us on that.

24 Can't be Alabama, could it?

25 MR. BECNEL: It could be Alabama, and I

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1 know why. It could be Alabama because Detroit used
2 to be the capital of the automotive industry, but
3 virtually everybody now is in Alabama. In fact, all
4 the manufacturers, almost every foreign
5 manufacturer, whether you consider Mercedes or BMW
6 or Hyundai, are building more cars there. The reason
7 they are there is because of Detroit's problem. I
8 think anywhere in Alabama before any federal judge
9 would be good.

10 But I make a second suggestion. The best
11 judge for this case, because it is going to settle
12 and it has got to be managed, is Judge Vance who is
13 probably the premier judge to handle an antitrust
14 case in this country. That is where she practices.
15 She even ruled against me in a previous Ford case.
16 But she knows what she is doing. And to sit and
17 talk about Louisiana, they have resolved probably
18 tens of thousands of Chinese drywall cases, tens of
19 thousands just in the last month of FIMA trailer
20 cases.

21 The average judge in the eastern district
22 of Louisiana only has 150 cases now. Judge Fallen
23 is about to resolve the rest of them. Propulsion is
24 resolved. In fact, we just wrapped it up and gave
25 \$6 million to the city of New Orleans to build a

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1 hospital.

2 Louisiana or Alabama would be great, but
3 Judge Vance would be fantastic, and it would get
4 over with quickly.

5 JUDGE HEYBURN: Thank you very much.

6 Mr. Nevares.

7 MR. NEVARES: Good morning. My name is
8 John Nevares.

9 I move this case be transferred to the
10 district of Puerto Rico to Judge Gusto Jaffe who

MDL 2311 Automotive Harness Systems Antitrust Litigation runs a rocket docket and has one of the best track records in running expedient dockets. He has vast experience in class actions, and right now that district of Puerto Rico is not handling any MDLs whatsoever.

In the alternative, I move for Judge Sara Vance. I'm also admitted to Louisiana, and I can vouch for her, that she is an excellent choice also. Thank you very much.

JUDGE HEYBURN: Thank you.

Mr. Sedran, how complicated do you think this litigation is going to be?

MR. SEDRAN: Antitrust cases are complicated, so it is not an easy case. It will be complicated.

We are advocating for New Orleans as well. If there is a center of gravity to this case, I suggest it's Tokyo. That is where the conspiracy was hatched. That is where the main documents would be and the witnesses. Obviously you don't have the authority to send the case to Tokyo.

The major defendants are Japanese corporations. We believe that is where the conspiracy was hatched. There really is no particular nexus to Michigan.

Mr. Becnel was right, that the times have changed. The auto manufacturers around the world are located in the south, Tennessee, Mississippi, Alabama, Illinois, so there are equal number of witnesses that we would find in the south.

Mr. Persky argued about the location of the grand jury as being an important factor. This panel has ruled in numerous cases that it is not an important factor. In the electrical car case you rejected that notion. In corn derivative, air cargo where I'm lead counsel, you rejected that notion. Flat glass you rejected that. In commercial explosives you rejected that.

The location of the grand jury really doesn't have any meaning in today's world. The

plaintiffs get the documents from the defendants. We don't get the documents from the Department of Justice or the grand jury. So the location of the grand jury really has very little meaning.

I want to suggest that Mr. Persky's argument that the first filed case should get some particular weight, and your prior decisions have said that, I think that is a bad precedent. You are going to cause a rush to the courthouse to file cases early. I don't think that is a factor you should consider today.

Thank you.

JUDGE HEYBURN: Thank you very much.

Ms. Nast.

MS. NAST: Good morning, Your Honors. My colleagues have already said much of what I was going to say, so I will be very brief.

As just an administrative update, our cases in Louisiana were assigned to Judges Englehardt and Feldman. There was an administrative order transferring the cases to Judge Feldman in the

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last day or two.

Judge Feldman is an excellent jurist.
However, it is our understanding he has duties that
take him to Washington several days a month on a

commission he is working on. We have no idea
whether or not he would be in a position to accept
an MDL or not.

I'm recommending Judge Sara Vance. She
has MDL experience. As Mr. Becnel mentioned, she
had the Ford MDL. I got a chance to see firsthand
how decisive she is and how she keeps things moving.
We lost that case, but I always thought it was
decided fairly even though we were on the losing
end.

She does have substantial antitrust
experience from her private practice before she went
on the bench. If she were to receive this case, we
would have an opportunity for all of us to benefit
by that antitrust experience.

JUDGE HEYBURN: What kind of plaintiffs do
you represent?

MS. NAST: Indirect purchasers.

THE COURT: Is that going to be a problem
with this case, having three or four levels of
different kinds of plaintiffs?

MS. NAST: I don't think so, Your Honor.
I suspect we will end up with some classes. This is
going to be a very large case, probably one of the
biggest antitrust cases in terms of the number of

class members probably rivaling the airplane cases
in terms of numbers of class members. Probably
bigger than that.

I don't think it is going to be a problem.
It is just a question of management.

JUDGE HEYBURN: Thank you very much.

MS. MCEVOY.

MS. MCEVOY: Good morning, Your Honors.

May it please the court, I'm Julie McEvoy
here for Yazaki North America, Inc.

All six of the defendants who have made
their views known where the cases should be
transferred support transfer to the eastern district
of Michigan for many of the same reasons you heard
today. If the commercials are to be believed,
Detroit is back, and the defendants would certainly
support transfer of cases there.

I respectfully submit to Your Honors the
dispersion of the witnesses through the south would
not outweigh the locus of information to be
discovered in the eastern district of Michigan where
many of the defendants have offices and have their
corporate headquarters.

If you are looking at where the
information will be found that the plaintiffs will

want, the defendants will need, there is no question
Detroit is the right place to send these cases.

Unless the panel has any questions, I will
rest.

JUDGE HEYBURN: How many defendants are
there?

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MS. McEVoy: Forgive me, Your Honor. I should have done a head count before I came to the podium.

There are six who authorized me to speak for them. There are many others who have not been served or who contest the court's jurisdiction over them as they are defendants located in Japan, not in the United States. In total, there are about 15 entities named as defendants in the various cases.

JUDGE RENDELL: Are all the defendants Japanese?

MS. McEVoy: No, Your Honor. Some of them are United States subsidiaries. Some of them are foreign companies. Others are Japanese defendants.

JUDGE HEYBURN: Any other questions? Thank you very much. We will take the matter under submission.

CERTIFICATE OF REPORTER

STATE OF FLORIDA
COUNTY OF DADE

I, MATTHEW P. SPOUTZ, Court Reporter and Notary Public, certify that I was authorized to and did stenographically report the proceedings before the United States Judicial Panel on Multidistrict Litigation, pages 1 through and including 14; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 16th day of February, 2012.

MATTHEW P. SPOUTZ, Shorthand Reporter